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Chief Administrative Officer

July 29, 2003

To: Supervisor Yvonne Brathwaite Burke, Chair
Supervisor Gloria Molina
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From: David E. Janssen
Chief Administrative Officer

FEDERAL LEGISLATIVE UPDATE

Last Friday, the House of Representatives recessed until September 3, 2003, and the Senate will begin its summer recess at the end of this week.

Federal Fiscal Year (FFY) 2004 Homeland Security Appropriations

Last week, the Senate passed its version of the FFY 2004 Homeland Security appropriations bill (H.R. 2555). All Democratic amendments to increase funding for first responders were rejected, including an amendment, defeated 48-48, to increase high-threat urban area grants by $250 million more than the Senate Appropriations Committee had included in the bill. As a result, as reported to your Board on July 15, 2003, the Senate bill provides $750 million for urban area grants in FFY 2004, which is $150 million more than the House version, but $50 million less than the FFY 2003 funding level. The Senate bill also provides $1.75 billion for State Homeland Security Formula Grants, which is $150 million less than the House bill and $116 million less than the FFY 2003 funding level.

During the debate, a number of Senators voiced concern about the inequities in the distribution of homeland security funding which favors less populous rural states. The Senate bill, however, does not change the allocation formulas for any homeland security programs. House and Senate conferees will meet in September to resolve the differences between the bills.

FFY 2004 Commerce-Justice-State Appropriations (CJS) Bill

On July 23, 2003, the House passed its version of the FFY 2004 CJS appropriations bill (H.R. 2799), which includes $400 million for the State Criminal Alien Assistance Program (SCAAP). In comparison, SCAAP was funded at $250 million in FFY 2003 and $565 million in FFY 2002. Other funding of County interest in the bill includes:

- $400 million for the Local Law Enforcement Block Grant, the same as in FFY 2003;
- $683 million for Community-Oriented Policing Services (COPS) grants of which $100 million is for the COPS Law Enforcement Technology Program. In comparison, overall COPS funding totaled $929 million in FFY 2003;
- $500 million for Byrne formula grants, the same as in FFY 2003; and
- $100 million for the Juvenile Accountability Block Grant, which is $90 million less than FFY 2003.

Washington Advocate Franklin Logan reports that the House Appropriations Committee includes report language specifying that Los Angeles County is one of the jurisdictions eligible for earmarked COPS Law Enforcement Technology Program funding. Unlike past years, the committee report does not specify dollar amounts or the names of specific projects to be funded in the listed jurisdictions. Instead, it states that these grants are for "technology improvements to police and sheriff departments in communities that are in need of modernizing their equipment to improve their crime prevention and investigative capabilities and for which alternative sources of funding are not available."

He believes that the County was included in the list of eligible jurisdictions because Representative Dreier submitted a request to the Committee for $1 million for two mobile command and communications vehicles on behalf of the County's Sheriff's Department.

FFY 2004 Energy and Water Development Appropriations Bills

On July 18, 2003, the House passed its version of the Federal Fiscal Year (FFY) 2004 Energy and Water Development appropriations bill (H.R. 2754). The Senate version (S. 1424) is awaiting floor action. Below is a summary of funding for Army Corps of Engineers' civil works projects and studies of County interest:

- Marina del Rey Entrance Maintenance Dredging: The House bill includes $100,000 while the Senate version does not include funding for this project for which $200,000 was requested.

- Marina del Rey and Ballona Creek Sediment Control Management Plan: Both houses included $150,000 for this study, which is $250,000 less than the $400,000 requested.

- Coast of California Storm and Tidal Wave Study - Los Angeles County: The Senate bill includes $700,000, which fully funds our request, while the House version includes $250,000 for this study.

- Los Angeles County - Regional Dredged Material Management Plan: The House bill includes $450,000 while the Senate bill includes $150,000 for this planning effort for which $800,000 was requested.

- Ballona Creek Restoration: The House bill includes $250,000 while the Senate bill includes $150,000 for this project for which $400,000 was requested.

- California Coastal Sediment Master Plan: The House bill includes $300,000 while the Senate version does not include funding for this study for which $900,000 was requested.

- Arroyo Seco Watershed Management Plan: Both bills include $150,000 for this study, which is $350,000 less than the $500,000 requested.

- Los Angeles River Headwaters: Both houses include $250,000, which is $50,000 more than the $200,000 requested.

- Los Angeles County Drainage Area (LACDA) Project: The Senate bill includes $4,931,000, as requested by the President for maintenance of the LACDA project, while the House version contains $6,900,000, including $2,000,000 for assistance to local agencies for environmental restoration, recreation and aesthetic improvement projects on the Los Angeles River.

It should be noted that Congress has followed the President's request that it not fund any new Corps projects, including several watershed management projects that the County Department of Public Works is pursuing.

American Public Human Services Association (APHSA) Conference

Last week, County staff attended APHSA's conference, which addressed a number of major human services issues of interest to the County, and which included participants from the Bush Administration, Congress, state and local governments, think tanks, and advocacy groups. Below are highlights of major issues addressed at the conference:

Temporary Assistance for Needy Families (TANF) Reauthorization: Much of the conference, including an all-day session on July 20, 2003 focused on TANF reauthorization legislation. The House passed its version (H.R. 4) early this year, but the Senate has yet to act on its version. Majority and minority staff to the Senate Finance Committee participated in an in-depth discussion of TANF reauthorization in the Senate at the conference. They reported that the Committee's mark-up of a TANF bill that had been planned for July 23, 2003 would be postponed due to the continued difficulty of drafting a bill which could secure enough votes to pass the Committee and ultimately the Senate.

Two of the biggest areas of disagreement concern child care funding and work participation requirements. The Child Care Development Block Grant (CCDBG) also is being reauthorized under the TANF reauthorization bill. The House TANF reauthorization bill (H.R. 4) would increase discretionary CCDBG funding by $1 billion and mandatory CCDBG funding by $1 billion over five years. Discretionary funding must be included in future annual appropriations bills while mandatory funding does not require any future legislative action to be made available. Senate Democrats and a few Republican Senators support including a far bigger increase in mandatory CCDBG funding in the Finance Committee's bill.

The House bill would amend current law to impose far more stringent work participation rate requirements. To avoid fiscal sanctions, states would have to increase their work participation rates each year from 50% in FFY 2004 to 70% by FFY 2007, and a parent or caretaker would have to work 40 hours a week. A draft Senate proposal, which had been circulated by Finance Committee Chairman Grassley (R-IA), would gradually increase the work participation rate requirement to 70% by FFY 2007 though it includes other features that make it far less stringent than the House version.

Grassley's draft proposal would require 37 hours of work per week, provide states with partial credit towards meeting the work participation rate requirement for as few as 20 hours of work by a recipient, and reduce the effective work participation rate requirement by providing states with employment credits for recipients who leave TANF cash assistance for employment and higher wages. Senate Democrats support less stringent work participation requirements and greater state flexibility over the use of funds.

Under the 1996 welfare reform law, TANF was authorized through FFY 2002. Congress has acted to temporarily extend TANF at its current annual funding level through the end of FFY 2003, pending the enactment of a multi-year reauthorization bill. During the conference, Administration officials and Congressional Republican staff voiced their frustration with the Senate's delay in passing a TANF reauthorization bill. They hinted that, if no bill is enacted by the end of FFY 2003, House Republicans may not be willing to temporarily extend TANF at its current funding level. In response, Congressional Democrat staff blame the delays on the unwillingness of Republicans to compromise, and believe that TANF funding would not be cut as part of a short-term TANF extension.

Foster Care Flexible Funding Option: In the child welfare area, the APHSA conference focused on the Administration's proposal to provide states with a new option to receive Title IV-E foster care funds in the form of capped annual allotments over a 5-year period accompanied by greater flexibility over the use of funds. The option is to be budget neutral over five years.

Participating states would be required to maintain current statutory child protections and meet a maintenance-of-effort (MOE) requirement based on its FFY 2002 expenditures. They would be allowed to use foster care funds on behalf of any child in their child welfare system, regardless of their parents' income level, and to use funds for child welfare services as well as for foster care. The Administration has not released a detailed description of its proposal, and has been consulting with states and APHSA in refining its proposal. Attachment I is an APHSA summary of the foster care flexible funding proposal that is based on comments made by Administration officials.

The County's Department of Children and Family Services (DCFS) has expressed interest in securing greater flexibility over the use of Federal funding to enable it to implement needed reforms that focus on improving children's safety, permanence, and well-being. Current Title IV-E financing rewards more costly out-of-home foster care placements, and, unlike Medicaid, Title IV-E is not one of the programs for which Section 1115 waivers may be used. The Administration's proposal does not specifically provide for flexible foster care grants to local governments, such as the County.

Legislation to authorize the foster care flexible funding option will not be enacted this year. The Administration still is consulting with state officials and APHSA. The House Ways and Means Human Resources Subcommittee staffer responsible for child welfare issues told my staff that the Subcommittee planned to introduce a flexible foster care funding bill later this year, but not to consider it until next year. The Senate also has no plans to move enabling legislation this year.

Medicare Prescription Drug Legislation: The APHSA conference had a session on the impact on states of Medicare prescription drug legislation (S. 1/H.R. 1), which is in conference committee. Matt Salo of the National Governors Association reported that the House bill was better for states because the Federal government gradually would assume the full cost of prescription drug benefits for Medicaid recipients who also are eligible for Medicare. In the Senate bill, dual eligibles would continue to be covered under Medicaid as under current law, but Medicare would pay Medicare Part B supplementary medical insurance premiums for dual eligibles with incomes between 75% and 100% of the poverty level.

The Congressional Budget Office (CBO) estimates that providing Medicare prescription drug benefits to Medicaid recipients makes the estimated Federal costs of H.R. 1 about $47 billion higher than S. 1 over the first eight years of the new Medicare drug benefits that will take effect on January 1, 2006. The Senate's provision to pay Medicare Part B premiums for certain Medicaid recipients, which is not in H.R. 1, however, would cost the Federal government $28 billion in the first eight years.

Salo and APHSA staff indicated that, while the above provisions would benefit states financially, other provisions would impose added administrative burdens and costs on states. Under both bills, states would be responsible for administering an interim prescription drug discount card which would subsidize drug purchases for Medicare recipients without any other drug coverage until the new benefit program begins in 2006. The Federal government would cover only 80% of the cost of administering these cards. The APHSA session did not address Medicaid Disproportionate Share Hospital (DSH) and immigrant provisions in the Medicare bills that also are of County interest.

Workforce Investment Act (WIA) Reauthorization: Legislation is pending this year to reauthorize WIA programs. The House passed its version (H.R. 1261) early this year. The Senate Health, Education, Labor, and Pensions (HELP) Committee, which has jurisdiction over WIA, has not yet acted on its version. HELP Committee members want to agree on a bipartisan bill before the committee marks up a bill. The House version would consolidate WIA Youth, Adult, and Dislocated Worker grants and State Employment Service funding into a single block grant. The Senate is unlikely to consolidate all of these programs except that the Adult and Dislocated Worker grants may be combined into one block grant.

Neil Bomberg of the National Association of Counties, who spoke on a panel on WIA reauthorization, voiced concern that the House bill would shift greater decision-making authority and control over funds from the local level to states. For example, under current law, states must pass through at least 85% of Adult funds and 60% of Dislocated Worker funds to local workforce boards, but states must pass through only 50% of combined Adult and Dislocated Worker funds to local areas under the House bill. One of the main reasons for the delay in Senate action on WIA reauthorization is the lack of consensus on the roles and responsibilities of state and local governments for administering WIA.

Housing Assistance for Needy Families: The Bush Administration has proposed converting the Section 8 Housing program, which currently is administered by local housing authorities, into a new Housing Assistance for Needy Families (HANF) block grant to states. Presenters and APHSA staff at the conference indicated that this proposal will not be passed this year. In fact, Senate and House committee mark-ups have not been scheduled on HANF enabling legislation (S. 947/H.R. 1841), and the National Governors Association does not have a position supporting the HANF block grant to states.

Food Stamp Error Rate Penalties: The attached table (Attachment II) on FFY 2002 Food Stamp error rates and penalties were distributed at the APHSA Conference. As seen in the table, California had the highest FFY 2002 error rate (14.84%) and fiscal penalty ($62,556,295) of any state, compared to a national average error rate of 8.26% and a national total of $102,882,471 in fiscal penalties. In FFY 2001, California had an error rate of 17.37% and a fiscal penalty of $115,755,306, compared to a national error rate of 8.66% and a national total of $133,851,829 in fiscal penalties.

On July 24, 2003, Eric Bost, the Under Secretary for Food, Nutrition, and Consumer Services in the Department of Agriculture cited California's high Food Stamp error rate in his testimony before a House Agriculture Committee oversight hearing on the Food Stamp program. Washington Advocate Carla Kish, who attended the hearing, reported that Representative Calvin Dooley (R-CA) asked Bost whether California's use of monthly reporting is a reason for its high error rate and that Bost said yes, but that California had many other problems that cause the high rate, including its lack of commitment to correcting its problems.

"Money Follows the Person" Long-Term Care Initiatives: The APHSA conference included a session on "Money Follows the Person" (MFP) approaches to long-term care delivery systems that the Bush Administration and Centers for Medicare and Medicaid Services (CMS) were supporting. CMS staff spoke on the President's budget proposal for a MFP Rebalancing Initiative, which would provide financial assistance to states to help them promote home and community-based care as an alternative to more costly nursing home care.

The Administration is requesting $350 million a year to fund a five-year demonstration project under which states would be fully reimbursed for one year for the cost of services provided to Medicaid recipients who move from institutions into home and community-based care. After the first year, Federal funding would be provided at the normal Medicaid match rate. Legislation (S. 1394) authorizing this initiative was introduced earlier this month.

A number of states have implemented MFP approaches for promoting less costly home and community-based care as an alternative to nursing homes. One simple approach, which was adopted through a state appropriations rider in Texas, was described as allowing Medicaid recipients who leave nursing facilities to use their nursing facility funding for home and community-based services. Federal and state Medicaid funding then shifts from Texas' nursing home budget to the community care programs into which the recipient moved. Since this rider was enacted in 2001, over 1,500 persons have moved from nursing homes to community care programs in Texas.

National Association of Counties (NACo) Annual Conference

A number of County officials and staff attended the National Association of Counties' (NACo) Annual Conference, which was held earlier this month. Given the focus on homeland security in Washington, D.C., there were panel discussions on first responder grants, communications interoperability, and terrorism preparedness, which included the participation of local government officials, private industry representatives, and Bush Administration officials. County staff raised the need for changing Federal homeland security allocation formulas to better target funds, based on threat levels and needs. They also met with the Department of Homeland Security's newly appointed Director of Local Government Coordination, David Hagy, who attended the conference.

Of County interest, NACo's Justice and Public Safety Steering Committee adopted a number of resolutions including urging Congress to allocate more funding for the State Criminal Alien Assistance Program (SCAAP). The Committee also adopted a resolution, introduced by Sheriff Baca, to continue the Federal assault weapons ban.

The NACo Health Steering Committee also adopted a number of policy positions, supported by the County, including support for restoring Medicaid Disproportionate Share Hospital funding and support for allowing states to retain unspent State Children's Health Insurance Program (SCHIP/Healthy Families) funds rather than to return unspent funds to the Federal Treasury.

We will continue to keep you advised of any new developments.

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Attachments

c: Executive Officer, Board of Supervisors
County Counsel
All Department Heads
Legislative Strategist

APHSA
American Public Human Services Association

Foster Care Flexible Funding Option

Background

The President's FY 2004 Budget outlines a new legislative proposal to introduce an option available to all states to participate in an alternative financing system for child welfare designed to meet the needs of each state's foster care population. States choosing to participate will receive funds in the form of flexible grants. Participating states will be required to continue to: maintain the statutory child protections, including those outlined in the Adoption and Safe Families Act, agree to maintain existing levels of state investment in child welfare programs, continue to participate in the Child and Family Services Reviews and maintain a separate adoption assistance program. The option must be cost neutral over 5 years. The House Ways and Means Subcommittee on Human Resources held a hearing on the proposal in June 2003; however, no legislation has been introduced in the House or Senate to date.

Option Features

- The option applies to IV-E foster care expenditures for administration, training, SACWIS and maintenance; IV-E adoption assistance remains an open-ended entitlement. Under the option, states would receive annual **grants over a 5-year period**, equal to the projected growth in federal foster care expenditures.
- The Administration does not currently project **State-by-State baselines** for the Foster Care program, or for any other relevant Department of Health and Human Services ("HHS") programs. However, the Administration has stated that they plan to work with States, the Congress and other interested organizations such as the American Public Human Services Association to develop a methodology for determining State-by-State allocations that would function within the national baseline. Similarly, the Office of Management and Budget ("OMB") will be involved in these discussions, as both OMB and HHS have strong interests in maintaining cost-neutrality, which the President requires for this proposal.
- With respect to the base year, states would have the choice of the average of IV-E claims in the years **FY 2000 – FY 2002 or FY 2002,** whichever is greater.
- The **projected baseline growth** is 4.2 percent annually.
- States must decide within a fixed period of time whether to **opt in.**
- However, once a state has exercised the option, it **may not opt out** during the 5-year period.

- States would have the option of receiving **up front funding** or, a greater share of the annual allotment in the early years. However, the annual amount would be limited to 20 percent of the 5 year total funding amount.
- States could **roll over** unspent federal dollars forward from fiscal year to fiscal year.
- States with **child welfare waivers** could choose whether to continue or discontinue them.
- States could **use the foster care funds** for any child in the child welfare system, regardless of income and for any IV-B like purpose.
- The so-called **"look-back" test** linked to 1996 AFDC eligibility would be eliminated.
- The "look-back" test remains for **IV-E adoption assistance** eligibility determination, but the proposal changes the current system allowing States to test at one point in time, rather than twice. A State choosing the child welfare program option would be required to test for AFDC eligibility once at the time that termination of parental rights proceedings are initiated rather than determining eligibility at two points in time (at the point of removal from the home and when the State files the adoption petition), as is currently required.
- With respect to **Medicaid eligibility**, children that are currently eligible will continue to be eligible. The vast majority of children in foster care are either currently entitled to Medicaid under the existing title IV-E foster care maintenance payments program or would otherwise qualify for the program. With the exception of the children who have significant income and resources of their own, all children who have been removed from their parent's home and receive services under the program option would be eligible for Medicaid under an eligibility group that covers all children with incomes at or below the Federal poverty line.
- **Child support** and IV-E interactions are yet to be clarified; however, the Administration has indicated that these would mirror current law and practice.
- States would be subject to a maintenance of effort **(MOE)** requirement based on the State's IV-E foster care expenditures in FY 2002. The definition of state MOE is yet to be determined.
- A $30 million set-aside will be available for **Indian Tribes**. Indian Tribes will have similar program requirements as do States; however, the Secretary will have the authority to waive certain State program requirements that are burdensome to Indian Tribes but do not affect or compromise child safety.
- A one-third of one percent set aside will be available for monitoring and technical assistance of State foster care programs and to fund **federal research.**
- States would have access to the $2 billion **TANF contingency fund**, in the event that there was a severe increase in their foster care caseload. States would be required to meet "triggers" to qualify for these matching funds. Under the Option, States may request additional funding from the

TANF contingency fund when the State's foster care population increases by at least 15 percent over the course of two fiscal years and either the foster care population increases by at least 10 percent nationally over the course of two years, or the unemployment trigger for the TANF Contingency Fund is met.

- Participating **states will be required to** continue to maintain the child protections outlined in statute, including those in the Adoption and Safe Families Act; agree to maintain existing levels of state investment in foster care; and continue to participate in the Child and Family Services Reviews and be subject to related penalties.
- Requirements for **IV-E reviews would be eliminated** along with other administrative requirements.
- At the end of the 5 year period, states choosing to return to the IV-E entitlement structure would be **required to redetermine eligibility** for all children served under the flexible funding option.

Attachment II

FOOD STAMP PROGRAM

[illegible] FY 2002 [illegible]

ERROR RATES, POTENTIAL & ADJUSTED LIABILITIES & ENHANCED FUNDING [illegible]

STATE	FY 2002 OVER-PAYMENTS	FY 2002 UNDER-PAYMENTS	FY 2002 PAYMENT ERROR RATE	FY 2002 VAL. NEGATIVE ERROR RATE	POTENTIAL LIABILITIES	ADJUSTED LIABILITIES 2/	ENHANCED FUNDING
CONNECTICUT	8.74	2.96	11.70	6.67	$2,088.755	$2.088,755	
MAINE	4.19	2.07	6.26	4.50			
MASSACHUSETTS	6.28	2.11	8.40	5.33	$4.965	None	
NEW HAMPSHIRE	10.56	1.46	12.03	1.48	$596.340	$596,340	
NEW YORK	5.33	2.41	7.75	24.53			
RHODE ISLAND	7.58	2.63	10.21	6.52	$295,805	$295.805	
VERMONT	6.83	0.85	7.68	10.18			
DELAWARE	5.23	3.24	8.46	8.37	$1.903	$5	
DIST. OF COL.	6.62	2.14	8.75	21.23	$21.995	$21,995	
MARYLAND	6.05	2.75	8.80	14.58	$75.968	$75.968	
NEW JERSEY	3.20	0.87	4.08	4.99			$14,452,563
PENNSYLVANIA	7.54	1.95	9.49	4.60	$1.282,737	$1,282.737	
VIRGINIA	4.82	1.92	6.74	9.12			
VIRGIN ISLANDS	4.16	1.55	5.72	1.26			$124.640
WEST VIRGINIA	5.47	1.66	7.13	6.38			
ALABAMA	7.57	1.16	8.74	8.34	$116,421	$2.476	
FLORIDA	7.42	2.19	9.61	9.63	$1.938,237	$1,715,327	
GEORGIA	5.59	1.14	6.73	7.95			
KENTUCKY	6.27	1.44	7.71	4.64			
MISSISSIPPI	3.50	0.89	4.39	2.80			$4,898.620
NORTH CAROLINA	3.59	1.11	4.70	1.40			$10,122,355
SOUTH CAROLINA	4.18	0.23	4.40	0.83			$4,865,345
TENNESSEE	6.06	0.97	7.02	8.24			
ILLINOIS	7.32	1.42	8.75	10.60	$268.385	$206,682	
INDIANA	5.90	2.40	8.31	3.57	$1.235	$1,235	
MICHIGAN	9.54	4.56	14.10	14.92	$26,614.639	$24.734,986	
MINNESOTA	4.51	1.22	5.73	2.21			$1,423,066
OHIO	4.51	1.99	6.50	6.95			
WISCONSIN	9.19	3.49	12.69	10.30	$4.688,357	$3,486.101	
ARKANSAS	3.53	0.75	4.29	1.98			$3,967.618
LOUISIANA	3.88	1.90	5.78	2.90			$1,443.356
NEW MEXICO	5.54	1.17	6.71	1.13			
OKLAHOMA	6.10	1.84	7.94	3.59			
TEXAS	3.47	1.38	4.85	2.38			$29.136,689
COLORADO	7.23	2.43	9.66	22.73	$392.575	$303.024	
IOWA	4.79	1.65	6.44	4.76			
KANSAS	8.95	2.75	11.70	3.11	$1.622.778	$1,493.379	
MISSOURI	7.88	1.89	9.77	9.90	$1,316.424	$1.299,046	
MONTANA	6.53	1.64	8.18	1.69			
NEBRASKA	5.20	1.82	7.02	0.79			
NORTH DAKOTA	3.99	2.14	6.14	4.17			
SOUTH DAKOTA	1.73	0.39	2.12	0.32			$728.325
UTAH	4.88	1.72	6.60	7.57			
WYOMING	2.84	0.45	3.29	1.69			$750.857
ALASKA	8.23	2.76	10.99	7.44	$536.453	$246.349	
ARIZONA	3.86	1.41	5.27	7.58			$3.841,799
CALIFORNIA	10.15	4.69	14.84	10.01	$88.888,311	$62,556.295	
GUAM	4.14	1.91	6.05	17.76			
HAWAII	3.67	1.36	5.03	2.80			$1,476.790
IDAHO	5.66	3.39	9.04	5.25	$45.677	$368	
NEVADA	6.43	1.15	7.59	6.42			
OREGON	8.40	2.66	11.07	3.18	$3.053.879	$2.475,599	
WASHINGTON	5.96	2.20	8.16	12.23			
TOTAL	**6.16**	**2.10**	**8.26**	**N/A**	**$133.851,839**	**$102,882,471**	**$77,232,022**

1/ Based on data available as of 6/19/03. Due to rounding the payment error rate may not always equal the sum of the overpayment and underpayment error rate.

2/ Amount of liabilities adjusted to take into account the effect of high proportions of earners and immigrants in States' caseloads.

Effective Date: 6/19/2003

File:I:\Data\Shared\QCB\Excel\ Sanction and Incentive Calculations\FY02 Sanctions & Incentives\ FY 2002- Official Chart #1